

A Saw Siew Tuan v Omicrast Manufacturers Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO R-02-1605
OF 2011

B RAMLY ALI, AZIAH ALI AND MAH WENG KWAI JJCA
5 JULY 2013

C *Contract — Sale and purchase of land — Specific performance — Appeal from High Court — Refusal of vendor to apply for consent to transfer land to buyer — Whether vendor had right over land during execution of agreement — Whether there was valid contract between parties — Whether terms in agreement certain — Whether agreement void for uncertainty — Contracts Act 1950 s 30*

D The appellant's deceased husband was the holder of a lease of land ('the property') which expired in 1982. When the appellant's husband passed away, the appellant sold the property to the respondent and the parties executed a sale and purchase agreement ('SPA') in 1995. The respondent assisted the appellant to apply for a lease of the property and the application was successful and a new lease for 99 years commencing in 2004 was issued to the appellant. When the appellant refused to apply to the state authority for consent to transfer the land to the respondent, the latter claimed for specific performance of the SPA against the former at the High Court. The appellant argued that the agreement was void and counterclaimed for losses allegedly incurred due to damage to trees on the property caused by the respondent. Before the High Court, the appellant testified that she had intended to sell the property to the respondent even though she had no title to the property. The judicial commissioner ('JC') found that there was a valid contract between the parties and that at the material time, the parties were aware that the appellant had no right over the property. It was also found that there was no evidence that the state authority had taken back the property and since the appellant's deceased husband was the previous leaseholder, the appellant had an indirect interest over the property. The High Court allowed the respondent's claim for specific performance and dismissed the appellant's counterclaim. Hence, the present appeal. The only issue for the court's determination was whether the SPA was void for uncertainty as it was submitted by the appellant, inter alia, that since the SPA was uncertain in its terms, it was thus void for uncertainty by virtue of s 30 of the Contracts Act 1950 ('Act') and therefore, the SPA was not capable of specific performance; since alienation/lease of the property to the appellant was a fundamental term of the SPA, failure to obtain such lease resulted in the appellant not acquiring any interest in the property and the entire SPA would be devoid of purpose

Held, allowing the appeal:

- (1) At the time of execution of the SPA, the appellant had no good title to the

property as the lease had expired in 1982, approximately 13 years earlier. Although the appellant might have had the intention to sell the property to the respondent, at the material time she had no interest or title in the property which she could covenant to convey to the respondent. The fact that the appellant's deceased husband was the previous leaseholder of the property or that she was in possession of the property would not have conferred upon her any indirect interest in the property. The appellant could not have acquired any legitimate expectation that she would obtain title to the property in whatever form (see para 6).

- (2) Alienation of state land would take effect upon the registration of a register document of title as prescribed by s 78(3) of the National Land Code ('NLC') and notwithstanding that its alienation had been approved by the state authority, the land would remain state land until that time and there could be no intervention by equity in the face of the specific legislative provisions of the NLC (see para 7).
- (3) Taking into consideration the fact that at the material time, the appellant had no good title to the property and the fact that the SPA did not provide for any time period for the appellant to obtain approval for alienation of the property in her favour, and considering the fact that there was no certainty that the state authority would approve the appellant's application, the completion of the sale and purchase transaction was uncertain and therefore the SPA was void for uncertainty by virtue of s 30 of the Act (see para 8).

[Bahasa Malaysia summary]

Perayu suami si mati adalah pemegang tanah pajakan ('tanah') yang tamat tempohnya pada tahun 1982. Apabila suami perayu meninggal dunia, perayu menjual tanah tersebut kepada responden dan pihak-pihak tersebut menyempurnakan perjanjian jual beli ('PJB') pada tahun 1995. Responden membantu perayu memohon untuk pajakan tanah tersebut dan permohonan tersebut berjaya dan pajakan baru untuk 99 tahun bermula pada tahun 2004 dikeluarkan kepada perayu. Apabila perayu menolak daripada memohon kepada pihak berkuasa untuk pemindahan tanah kepada responden, responden menuntut untuk pelaksanaan spesifik PJB terhadap perayu di Mahkamah Tinggi. Perayu berhujah bahawa perjanjian adalah batal dan menuntut balas untuk kerugian yang didakwa ditanggung akibat kerosakan kepada pokok-pokok di atas tanah disebabkan oleh responden. Di hadapan Mahkamah Tinggi, perayu memberi keterangan bahawa dia berniat untuk menjual tanah tersebut kepada responden walaupun dia tidak mempunyai hak milik kepada tanah tersebut. Pesuruhjaya kehakiman ('PK') mendapati bahawa terdapat kontrak sah di antara pihak-pihak dan bahawa pada masa material, pihak-pihak sedar bahawa perayu tidak mempunyai hak milik ke atas tanah tersebut. Ia juga mendapati bahawa tidak terdapat keterangan bahawa pihak berkuasa mengambil balik tanah tersebut memandangkan suami si mati perayu

- A adalah pemegang pajakan sebelumnya, perayu mempunyai kepentingan tak langsung ke atas tanah tersebut. Mahkamah Tinggi membenarkan tuntutan responden untuk pelaksanaan spesifik dan menolak tuntutan balas perayu. Maka rayuan ini. Satu-satunya isu untuk penentuan mahkamah adalah sama ada PJB adalah terbatal untuk ketidakpastian kerana ia diujahkan oleh
- B perayu, antara lain, bahawa memandangkan PJB adalah tidak pasti dalam termannya, ia oleh itu adalah terbatal untuk ketidakpastian mengikut s 30 Akta Kontrak 1950 ('Akta') dan oleh itu, PJB tersebut tidak membolehkan pelaksanaan spesifik; memandangkan pemindahan milik/pajakan tanah kepada perayu adalah terma asas PJB, kegagalan untuk memperolehi pajakan sedemikian mengakibatkan perayu tidak memperolehi apa-apa kepentingan dalam tanah tersebut dan keseluruhan PJB langsung tidak mempunyai tujuan.
- C
- D **Diputuskan**, membenarkan rayuan:
- (1) Pada masa pelaksanaan PJB, perayu tidak mempunyai hak milik sah kepada tanah tersebut memandangkan pajakan tersebut tamat tempoh pada tahun 1982, lebih kurang 13 tahun sebelumnya. Walaupun perayu mempunyai niat untuk menjual tanah tersebut kepada responden, pada
- E masa material dia tidak mempunyai kepentingan atau hak milik di dalam tanah tersebut yang mana dia boleh waad untuk memberikan kepada responden. Fakta bahawa si mati suami perayu adalah pemegang pajakan sebelumnya ke atas tanah tersebut atau dia dalam milikan tanah tersebut tidak akan memberikan kepadanya apa-apa kepentingan tak langsung di dalam tanah tersebut. Perayu tidak mungkin memperolehi apa-apa harapan yang sah yang dia boleh mendapatkan hak milik kepada tanah tersebut dalam apa-apa cara sekalipun (lihat perenggan 6).
- F
- (2) Pemindahan milik tanah kerajaan akan berkuat kuasa atas pendaftaran dokumen berdaftar hak milik seperti yang ditetapkan oleh s 78(3) of the Kanun Tanah Negara ('KTN') dan meskipun yang pemindahan miliknya diluluskan oleh pihak berkuasa, tanah tersebut akan kekal tanah kerajaan sehingga masa tersebut dan tidak terdapat campur tangan oleh ekuiti atas dasar peruntukan perundangan spesifik KTN (lihat perenggan 7).
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- H
- (3) Mengambil kira fakta pada masa material, perayu tidak mempunyai hak milik sah kepada tanah tersebut dan fakta bahawa PJB tidak memperuntukkan untuk apa-apa tempoh masa untuk perayu mendapatkan kelulusan bagi pemindahan hak milik tanah memihaknya, dan mempertimbangkan fakta bahawa tidak terdapat kepastian yang pihak berkuasa akan meluluskan permohonan perayu, penyelesaian transaksi jual beli adalah tidak pasti dan oleh itu PJB tersebut adalah batal untuk ketidakpastian mengikut s 30 Akta (lihat perenggan 8).]
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Notes

For cases on specific performance, see 3(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 5815–5824.

A

Cases referred to

Aberfoyle Plantations Ltd v Khaw Bian Cheng [1960] 1 MLJ 47; [1959] 1 LNS 3, PC (folld)

B

Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors; Lesco Development Corporation Sdn Bhd v Ya Chang Lan & 12 Ors [1984] 2 MLJ 123; [1984] 1 CLJ Rep 144, FC (refd)

North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Anor [2011] 2 CLJ 392, CA (folld)

C

Legislation referred to

Contracts Act 1950 s 30

National Land Code s 78(3)

D

Appeal from: Civil Suit No 22–04 of 2009 (High Court, Kangar)

Amit Singh Penesar (Teja Singh Penesar & Co) for the appellant.

WV Lye (KC Yae and HL Yap with him) (Cheah Teh & Su) for the respondent.

E

Aziah Ali JCA (delivering judgment of the court):**BACKGROUND FACTS**

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[1] The appellant's deceased husband was the holder of a lease of land known as LM No 111 Lot 4306, Mukim Kurong Anai, Perlis ('the property'). The lease had expired on 20 May 1982. The appellant's husband passed away on 2 November 1990.

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[2] On 15 November 1995 the appellant and the respondent executed a sale and purchase agreement ('SPA') whereby the appellant as vendor agreed to sell the property to the respondent. Subsequent to the SPA (exh P5) the respondent had assisted the appellant to apply for a lease of the property. The application was successful and a new lease for 99 years commencing 17 November 2004 was issued to the appellant. The respondent contended that the appellant had refused to take steps to apply to the state authority for consent to transfer the land to the respondent within three months from the date of receipt of the document of title and receipt of the necessary approval for transfer of the property in favour of the respondent whereupon the respondent instituted the action against the appellant at the High Court for specific performance of the SPA. The appellant contended that the agreement was void and counterclaimed for losses allegedly incurred due to damage to trees on the property caused by the respondent.

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A THE DECISION OF THE HIGH COURT

[3] It was not disputed that at the time the SPA was executed the appellant had no title to the property. In her evidence before the High Court the appellant agreed that she had intended to sell the property to the respondent. The learned judicial commissioner found that there was a valid contract between the parties and that at the material time the parties were aware that the appellant had no right over the property. The learned judicial commissioner found no evidence that the state authority had taken back the property. His Lordship found that by virtue of the appellant's deceased husband being the previous leaseholder therefore the appellant had an indirect interest in the property. On 11 May 2011 the High Court allowed the respondent's claim for specific performance and dismissed the appellant's counterclaim. As at the date of the decision the state authority had yet to register the appellant as leaseholder.

[4] The appellant appealed to this court against the decision of the High Court. We allowed the appeal with costs of RM10,000. The decision of the High court was set aside. The deposit was ordered to be refunded to the appellant.

E THE APPEAL

[5] Before us the only issue for our determination was whether the SPA was void for uncertainty. Learned counsel for the appellant submitted that the essential ingredient of the SPA was for the appellant to obtain approval from the state authority to alienate and/or lease the property in favour of the appellant. The SPA did not provide for any specific time frame for performance of the said obligation. It was submitted that since the SPA was uncertain in its terms it was thus void for uncertainty (s 30 of the Contracts Act 1950). Hence the SPA was not capable of specific performance. It was further submitted that since alienation/lease of the property to the appellant was a fundamental term of the SPA, failure to obtain such lease resulted in the appellant not acquiring any interest in the property and the entire SPA would be devoid of purpose. For the respondent it was submitted that the learned judicial commissioner was correct in his finding that the appellant had an indirect interest in the property. Further it was submitted that the appellant was also in possession of the property at all times.

[6] On the evidence we agreed with counsel for the appellant that at the time of execution of the SPA the appellant had no good title to the property as the lease had expired on 20 May 1982, approximately 13 years earlier. On this issue we find the judgment of the Privy Council in the case of *Aberfoyle Plantations Ltd v Khaw Bian Cheng* [1960] 1 MLJ 47; [1959] 1 LNS 3 instructive. In that

case as a result of an amalgamation the defendant/appellant had succeeded Harewood Rubber Estates Ltd's interests in 1951, under which the defendant/appellant acquired all the assets of Harewood Rubber Estates Ltd in exchange for shares. By an agreement dated 8 November 1955 the defendant/appellant as vendor entered into a conditional agreement with the plaintiff/respondent for the sale of a rubber estate in the State of Perak known as the Harewood Estate comprising a total area of some 1,336 acres. This area was made up of (a) some 1,154 acres held by the vendor's predecessor in title Harewood Rubber Estates Ltd as registered proprietor under certificates of title or grants from the Ruler of Perak, and (b) some 182 acres comprised in seven leases from the Ruler to Harewood Rubber Estates Ltd. The leases had in fact expired on 19 June 1950. Lord Jenkins in delivering the judgment said, *inter alia*, as follows:

Clause 1 of the agreement provides that 'subject to the condition contained in cl 4 the vendor will sell and the purchaser will buy' the property known as the Harewood Estate as described in the Schedule to the agreement, which description includes the land comprised in the seven expired leases. The vendor as beneficial owner of the 1,154 odd acres could readily procure the transfer of the legal title to the purchaser. The vendor as between itself and Harewood Rubber Estates Ltd would be entitled to the benefit of any renewals of the seven leases comprising the 182 odd acres if and when granted. Harewood Rubber Estates Ltd, or the vendor, had remained in permissive occupation of the land comprised in the expired leases when the agreement of 8 November 1955 was entered into. The position thus was that at the date of the agreement the vendor had a good title to the 1,154 odd acres, but that its title to the 182 odd acres depended on the success of its negotiations for the grant of new leases.

Insofar as the 182 acres comprised in seven leases the Privy Council said as follows:

unless and until new leases were granted the vendor had no assignable interest in the 182 odd acres.

Similarly in the present appeal we find that though the appellant may have had the intention to sell the property to the respondent, at the material time she had no interest or title in the property which she could covenant to convey to the respondent.

[7] Alienation of state land shall take effect upon the registration of a register document of title (s 78(3) of the NLC) and notwithstanding that its alienation has been approved by the state authority, the land shall remain state land until that time and there can be no intervention by equity in the face of the specific legislative provisions of the NLC (see *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors*; *Lesco Development Corporation Sdn Bhd v Ya Chang Lan & 12 Ors* [1984] 2 MLJ 123; [1984] 1 CLJ Rep 144;

A [1984] 2 CLJ 150 (FC)). In the case of *North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Anor* [2011] 2 CLJ 392 this court had occasion to state, inter alia, as follows:

B Section 48 of the Code makes it clear that no title to state land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever. It is immaterial whether the appellant had prematurely entered into possession of the land and claimed to have planted some 693.408 hectares of the land originally approved in principle for alienation with oil palm.

C Therefore the fact that the appellant's deceased husband was the previous leaseholder of the property or that she was in possession of the property would not have conferred upon her any indirect interest in the property. The appellant could not have acquired any legitimate expectation that she would obtain title to the property in whatever form.

D [8] It was provided by cl 3 of the preamble to the SPA that the sale of the property was subject to the approval from the relevant authorities being obtained. The SPA provided further that the balance purchase price was to be paid to the appellant's stakeholders within two months 'from the date of receipt by the Vendor of the document of title in respect of the said Property and the necessary approval for transfer (if any) in favour of the Purchaser whichever is later'. Thus completion of the contract between the appellant and the respondent was predicated on the occurrence of certain events. Taking into consideration the fact that at the material time the appellant had no good title to the property and the fact that the SPA did not provide for any time period for the appellant to obtain approval for alienation of the property in her favour, and considering the fact that there was no certainty that the state authority would approve the appellant's application (*North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Anor*), we agreed with learned counsel for the appellant that the completion of the sale and purchase transaction was uncertain and therefore the SPA was void for uncertainty (s 30 of the Contracts Act 1950). For the reasons stated we allowed the appeal and set aside the decision of the High Court.

H *Appeal allowed.*

Reported by Afiq Mohamad Noor

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